question to be decided at the trial of the action, whether here or in Kuala Lumpur. In this case, the considerations against the granting of a stay are these: the plaintiffs are under receivership and winding-up proceedings have been commenced against them. Mr. Lin Tah Hwa, who negotiated and concluded the contract on behalf of the plaintiffs, is being prosecuted for an alleged criminal offence or offences and is on bail; there may be or would be difficulty in obtaining leave for him to leave the country and proceed to Kuala Lumpur to give evidence in the Malaysian Action. It is obvious that his evidence is vital to the success of the plaintiffs. Eventually if a winding up order is made against the plaintiffs the Court may, thereafter on application, make an order under Rule 163 of the Companies Winding Up Rules 1969, for the Singapore Action to be transferred to the winding up proceedings, thus saving costs and expenses. Rule 163 provides:

"163. Where an order has been made for the winding up of a company the Judge shall have power to order the transfer to him of any action, cause or matter pending, brought or continued by or against the company."

On the material before me, I am not satisfied that a stay ought to be granted. In my opinion, the Assistant Registrar was right in refusing a stay.

Order accordingly.

Solicitors: *Shook Lin & Bok; Y.M. Jumabhoy & Co.;*

ISUME CO. PTE. LTD. v. HO SHING CONSTRUCTION CO. PTE. LTD.

[A.C.J. (Thean J.) June 22, 1987]

[Singapore Suit No. 4921 of 1986]

Practice and Procedure – Order 14 application – Claim for balance of money owed under contract – Appeal – Defence that wrong party was sued – Defence a sham.

This was an appeal against the decision of the Registrar given on March 9, 1987, in which on an Order 14 application, he gave judgment to the plaintiffs for the amount claimed together with interest and costs.

The plaintiffs claimed a sum of $52,278.28 representing the balance due from the defendants for work done under a contract made between the plaintiffs and the defendants and hire charges for certain machines let out on hire by the plaintiffs to the defendants.

There was no dispute on the amount due to the plaintiffs, but the defendants contended that the plaintiffs had sued a wrong party and that the defendants were not the party liable to pay such amount. The defendants claimed that the party liable was Shinju Pte. Ltd. The defendants submitted that the defendants were the main contractors of the Public Works Department for the whole project known as "Project Mindef SP114/83, Construction and Completion of Rigid And Flexible Pavement Associated Drainage System and Ancillary Works at Paya Lebar Airbase, Contract 1B, Singapore" and that they had subcontracted the works to Great Bambus (Pte.) Ltd., which in turn subcontracted the works to Shinju, and that it was Shinju which sub-contracted the works to the plaintiffs.

Held, dismissing the appeal: (1) the defendants' aforesaid submission referred to an internal matter between the defendants and its associate or affiliated companies. So far as the plaintiffs were concerned, they made the agreement of May 23, 1984, with the defendants and no one else;

(2) the defence was a sham and adopted for the purpose of delay and was hopelessly unsustainable.

APPEAL FROM REGISTRAR.

Lawrence Boo for the plaintiffs.
Tan See Swan for the defendants.

Cur. Adv. Vult.

Thean J.: This was an appeal against the decision of the Registrar given on March 9, 1987 in which, on an application under Order 14 of the Rules of Supreme Court, he gave judgment to the plaintiffs for the amount claimed together with interest and costs.

The plaintiffs claimed a sum of $52,278.28, representing the balance due from the defendants for work done under a contract made between the plaintiffs and the defendants and hire charges for certain machines let out on hire by the plaintiffs to the defendants. There was no dispute on the amount due to the plaintiffs, but the defendants contended that the plaintiffs had sued a wrong party and that the defendants were not the party liable to pay such amount. The party liable, they said, was Shinju Pte. Ltd. ("Shinju"). That was the only defence raised by the defendants and it was submitted on their behalf that that was a triable issue and the defendants ought to be given leave to defend. Having regard to the contemporaneous documents signed or executed on behalf of the plaintiffs and the defendants in relation to the transactions in question at the material times, I considered that such a defence must fail. Accordingly, after hearing the arguments advanced on behalf of the defendants and the plaintiffs respectively, I agreed with the decision of the learned Registrar and dismissed the appeal with costs.

The amount claimed by the plaintiffs was made up of two components: (i) a sum of $21,024.42 due from the defendants for work done pursuant to an agreement made between the plaintiffs and the defendants, and (ii) a sum of $31,253.86 due from the defendants as hire charges for machines let out on hire by the plaintiffs to the defendants. Insofar as the first amount was concerned, it arose out of the agreement in writing made between the plaintiffs and the defendants on May 23, 1984, and the agreement was made by way of a letter from the plaintiffs to the defendants setting out a quotation of the costs of materials and labour for the work to be carried out and a confirmation and acceptance of the quotation on behalf and in the name of the defendants. There was no mistake, and indeed there could be no mistake, as to who the parties were to this agreement. On this point, there was not the slightest suggestion in any of the affidavits affirmed and filed on behalf of the defendants that the signatory to the confirmation and acceptance on behalf of the defendants mistakenly thought that he was signing it on behalf of Shinju or thought that the letter was addressed to Shinju. Subsequently, after the work had been carried out, the plaintiffs forwarded to the defendants two statements of account dated May 28, 1986 and May 30, 1986. These statements had been subject to certain alterations made manually, and showed that the two sums of $6,853.48 and $14,170.94 (totalling $21,024.42) were due, and both the statements were confirmed as correct by one Ng Yap Hua, the project manager, on behalf and in the name of the defendants. However, Ng Yap Hua in his affidavit affirmed on January 22, 1987, said:

"4. When the Plaintiffs gave me a statement of confirmation to correctness of the account, I mistakenly used the Ho Shing Construction Co. Pte. Ltd.'s chop instead of Shinju Pte. Ltd. In fact, I mistakenly signed the statement of account which was intended to confirm the account for Shinju Pte. Ltd., not the defendants as I was always confused myself with the two Companies which I am working for."

I do not see how such a stand could really be maintained. The statements were addressed to the defendants, and it does not appear to me that any "chop" of the defendants was stamped on the statements. Immediately below the signature of Ng Yap Hua in each statement were written clearly and unmistakenly the names of the defendants and Ng Yap Hua. Clearly he must have seen his name before he signed it; clearly also he must have seen the name of the defendants. It was not suggested by Ng Yap Hua that he was illiterate and was unable to read and write English. Both the statements contained manual alterations of the various figures therein, and, presumably, these statements were examined and discussed, and the various amounts were negotiated before they were confirmed as correct by Ng Yap Hua on behalf and in the name of the defendants. In the circumstances, it seems to me totally reckless and irresponsible on the part of both Ng Yap Hua and Poh Chee Kim, the latter as a director of the defendants, to depose in their respective affidavits to the effect that by mistake the former used "the wrong company's chop" to confirm the amounts due to the plaintiffs. In the face of these documents, I can only say that such depositions were blatantly untrue.

As for the amount of $31,253.86 due to the plaintiffs for the hiring of the plaintiffs' machines, these machines were hired out by the plaintiffs in the course of carrying out the works undertaken pursuant to the agreement. Ching Ming Tack, a director of the plaintiffs, in his affidavit affirmed on October 3, 1986, said:

"5. In the course of carrying out these works for the defendants the plaintiffs let on hire and for the defendants' use machineries from May 31, 1984 to May 31, 1986 and the hire due to the plaintiffs amounted to S$31,253.86."

In none of the affidavits deposed to and filed on behalf of the defendants was it ever denied that the machines were hired from the plaintiffs in the course of carrying out the works under the contract. Further, in respect of the hiring of the machines, another director of the plaintiffs, Ching Ban Faat, in his affidavit affirmed on February 26, 1987, produced and exhibited the daily hire chits, which were all duly signed by the defendants' site supervisors or engineers and these chits were all addressed to the defendants. He further said that at the end of each month, the plaintiffs sent to the defendants invoices attaching these hire chits together with a statement of account for the amount due in respect of the machines hired. No protests whatsoever had ever been received from the defendants that a wrong party had been billed. A bundle of these documents in support was exhibited.

In support of the defence that the party liable to the plaintiffs for the sum claimed was Shinju, the defendants sought to rely on several matters. First, they said that the defendants were the main contractors of the Public Works Department for the whole project known as "Project Mindef SP114/83, Construction And Completion of Rigid And

Flexible Pavement Associated Drainage System And Ancillary Works at Paya Lebar Airbase, Contract 1B, Singapore" and that they had subcontracted the works to Great Bambus (Pte.) Ltd., which in turn sub-contracted the works to Shinju, and that it was Shinju which sub-contracted the works to the plaintiffs. That is an internal matter between the defendants and its associate or affiliated companies; so far as the plaintiffs are concerned, they made the agreement of May 23, 1984, with the defendants and no one else. There was not the slightest doubt as to who the parties were to this agreement. Secondly, the defendants relied on the cheques drawn by Shinju in payment to the plaintiffs, and on the cheque vouchers and ledgers of Shinju. That again is an internal matter, and so far as the plaintiffs are concerned, they were at liberty to accept, and they did accept, cheques tendered in payment of the amounts owed irrespective of whether such cheques were drawn by the defendants or others. Lastly, the defendants said that in another action the plaintiffs claimed against Shinju. That action seems to me to be an entirely different matter and has no bearing on the matter in this action.

In the result, I could come to no other conclusion than that that the defence raised by the defendants was a sham and adopted for the purpose of delay and was hopelessly unsustainable.

Appeal dismissed.

Solicitors: *Haridass Ho & Partners; Tan See Swan & Co.*

AUSTRALIAN MASTER BUILDERS CO. PROPRIETARY LTD. v. PAL-ASIAN SERVICES

[A.C.J. (Thean J.) June 23, 1987]

[Singapore – Civil Suit No. 1747 of 1985]

Contract – Sale of goods – Delivery of wrong goods – Claim for loss of further business – Whether damages allowed – Whether principles of Hadley *v.* Baxendale *applied.*

By a contract evidenced by an invoice dated June 22, 1984, the plaintiffs in this case sold and delivered to the defendants a quantity of grout for $42,750 of which a balance of $27,799.60 was unpaid by the defendants. Thereafter, by another contract as evidenced by an invoice dated July 20, 1984 (the second contract), the plaintiffs agreed to supply to the defendants a further quantity of grout. Unfortunately, the wrong goods were delivered to the defendants for shipment to their sub-purchaser in Indonesia. Upon discovering this, the plaintiffs immediately requested the defendants to return those goods, agreed to reimburse all expenses incurred and offered to despatch the grout as contracted. The defendants, however, rejected that offer and cancelled the order for the grout.

On February 23, 1985, the plaintiffs instituted the present action against the defendants claiming for the balance sum of $27,799.60 due under the first contract. The defendants counterclaimed for damages for breach of the second contract by the plaintiffs. Both applications for summary judgments were heard before the Senior Assistant Registrar. Judgment for the defendants was assessed at $49,313.73.

One of the items of loss which was asked for in the assessment of damages was the loss of further business with an Indonesian purchaser of the defendants. On this item, the Assistant Registrar awarded a sum of $30,000. The plaintiffs appealed against this assessment.

The defendants claimed that the loss of this order by the defendants was one ordinarily and naturally within the contemplation of the parties as a consequence of the breach of the second contract by the plaintiffs: *Hadley* v. *Baxendale.*(1)

Held, allowing the appeal: (1) the defendants had not discharged the burden of proving that the loss amounted to $30,000, and on that ground alone, the award could not be supported;

(2) on the facts, the loss of the defendants could not have been within the contemplation of the parties at the time of the contract.

Cases referred to:

(1) *Hadley* v. *Baxendale* (1854) 9 Exch. 341; 156 E.R. 145.

(2) *GKN Centrax Gears Ltd.* v. *Matbro Ltd.* [1976] 2 Lloyd's Rep. 555.

APPEAL FROM REGISTRAR.

David Arthur Mitchell for the plaintiffs.
Mansur Hussain for the defendants.

Cur. Adv. Vult.

Thean J.: By a contract as evidenced by an invoice dated June 22, 1984 ("the first contract"), the plaintiffs sold and delivered to the defendants a quantity of grout for $42,750 of which a balance sum of $27,799.60 was unpaid by the defendants. Thereafter, by another contract as evidenced by an invoice dated July 20, 1984 ("the second contract"), the plaintiffs agreed to supply to the defendants a further quantity of grout, but, unfortunately, in purported performance of this contract wrong goods were delivered to the defendants